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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,145	07/22/2003	Stephen W. Boyd	FXH1006USC1	8267
9561 7590 11/24/2009 POPOVICH, WILES & O'CONNELL, PA 8519 EAGLE POINT BLVD Suite 180 LAKE ELMO, MN 55042				
EXAMINER NGUYEN, VI X				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
11/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/625,145

**Applicant(s)**

BOYD, STEPHEN W.

**Examiner**

Victor X. Nguyen

**Art Unit**

3731

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16, 28-35, 63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 28-35, 63 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is in response to the amendment filed on 04/07/2009.

***Response to Amendment***

2. Accordingly, claims 16, 28-35 and 63-64 are pending in this present application.

Applicant's arguments with respect to claims 16 and 28 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16, 28-30 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by  
Kasinkas et al US 6,263,236.

Claim 16: Kasinkas et al disclose a cage 18 which is movable from a collapsed position to an expanded position (fig. 8b), the cage 18 having a plurality of openings in the expanded position, the openings being formed by rigidly connected elements 20b, the cage being configured such that when the cage is in the expanded position at the vascular site material from the vessel wall extends from the vessel wall into the openings, the cage having an inner surface which defines a cavity, the cage being releasable so that the cage may be left within the patient. It is noted that the limitation "the cage may be left within the patient" (an intended used language). The statement of intended used and other functional statement have been carefully

considered but are deemed not to impose any structural limitations on the claims distinguishable over Kasinkas reference which is capable of being used as claimed if one desires to do so; and a material removing element 20c positioned within the cage cavity to remove the material from the vessel wall extending into the openings when the cage is in the expanded position, the material removing element being positioned beneath the cage (fig. 9b) and being configured to be movable along the inner surface of the cage to remove the material extending into the openings (see col. 6, lines 15-20).

Claim 28: Kasinkas et al disclose a sheath 16; an expandable cage 18 movable from a collapsed position to an expanded position, the cage forming a plurality of openings in the expanded position (fig. 8b), the cage being configured such that when the cage is in the expanded position at the vascular site material from the vessel wall extends from the vessel wall into the openings, the expandable cage 18 having an inner surface which defines a cavity, the expandable cage being contained within the sheath 16 in the collapsed position so that the sheath holds the cage in the collapsed position, the cage being releasable so that the cage may be left within the patient; the sheath being retractable relative to the cage to expose the cage and permit the cage to expand; and a material removing element 20c positioned within the cage cavity to remove material from the vessel wall extending into the openings, the material removing element being positioned beneath the cage (fig. 9b) and being configured to be movable along the inner surface of the cage to remove the material extending into the openings.

Claims 29-30 and 33: Kasinkas et al disclose the cage has rigidly connected elements 20b which form the openings, the rigidly connected elements being deformed when moved from the expanded position to the collapsed position, wherein the rigidly connected elements are

deformed within an elastic range when moving from the expanded position (fig. 8b) to the collapsed position (fig. 8a), and wherein the cage forms 2-10 openings (figures 1, 4).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-32 and 63-64 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kasinkas in view of Fearnot US 5,100, 423.

Claims 31-32 and 63-64: Kasinkas teaches all limitations substantially as claimed except a bag positioned to receive the material. Fearnot teaches the bag or net (see figure 8, element 202) in order to capture debris or matter from the bag or the filter. It would have been obvious to one having ordinary skill in the art at the time the invention to modify Kasinkas by adding the bag or the net as taught by Fearnot in order to capture debris or matter from the bag or the filter.

Claims 34-35 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kasinkas. Kasinkas discloses the invention substantially as claimed. Kasinkas is silent regarding the openings of the cage have a length of at least 1 mm and the openings of the cage have a size of at least 0.5 mm. Regarding claims 34-35, the device could make the openings of the cage have a length of at least 1 mm and the openings of the cage have a size of at least 0.5 mm as best seen in fig. 1. In the alternative, it has been held that changes in size only require routine

skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device with the openings of the cage have a length of at least 1 mm and the openings of the cage have a size of at least 0.5 mm and a minor modification of Kasinkas's device would adopt the same for use under various conditions of service, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re. Aller, 220F, 2d 454, 105 USPQ 233.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor X Nguyen/  
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
11/20/09